

SENATE BILL 851

By Ketron

AN ACT to amend Tennessee Code Annotated, Title 65,
relative to Underground Utility Damage
Prevention.

WHEREAS, the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) is charged, by federal law, to determine if Tennessee complies with federal law in establishing an effective underground utility damage prevention program; and

WHEREAS, the Tennessee General Assembly adopted Chapter 470 of the Public Acts of 2009 directing the Tennessee Advisory Commission on Intergovernmental Relations to study the effectiveness of Tennessee's underground utility damage prevention program; and

WHEREAS, the Tennessee Advisory Commission on Intergovernmental Relations, in an October 2010 report, identified several compliance issues with Tennessee's underground utility damage prevention program and recommended that the Tennessee Regulatory Authority and the Tennessee One-Call System convene representatives of all stakeholder groups to discuss ways of enhancing underground utility damage prevention; and

WHEREAS, Tennessee's Comptroller of the Treasury, in a July 2012 performance audit, found that penalties under the Tennessee underground utility damage prevention program were not compliant with federal law and risked the loss of federal funding; and

WHEREAS, in December 2012, the Comptroller convened the Tennessee Regulatory Authority, the Tennessee One-Call System and representatives of all stakeholder groups to hold discussions on ways of enhancing underground utility damage prevention to improve public safety and to avoid the loss of federal funding; now therefore

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 31, is amended by adding the following language as a new section:

(a) There is created the underground utility damage prevention advisory committee, to be composed of eighteen (18) members as follows:

- (1) The executive director of the Tennessee regulatory authority or the director's designee;
- (2) The commissioner of transportation or the commissioner's designee;
- (3) The president of Tennessee 811 or the president's designee;
- (4) The executive director of Tennessee County Technical Assistance Services or the director's designee;
- (5) The executive director of Tennessee Municipal League or the director's designee;
- (6) The executive director of the Tennessee Associations of Utility Districts or the director's designee;
- (7) The executive director of the Tennessee Electric Cooperative Association or the director's designee;
- (8) The executive director of the Tennessee Municipal Electric Power Association or the director's designee;
- (9) A designee of the Tennessee Cable and Telecommunications Association;
- (10) A designee of the Tennessee Road Builders Association;
- (11) A designee of the Tennessee Farm Bureau;
- (12) A representative from the Rail Road industry;
- (13) A representative from the Interstate Pipeline industry;
- (14) A designee of the Associated Builders and Contractors of Tennessee;
- (15) A designee of the Tennessee Gas Association;

(16) A representative from a large Tennessee incumbent local exchange carrier;

(17) A representative from a small Tennessee incumbent local exchange carrier; and

(18) A designee of the Tennessee Association of General Contractors.

(b) The underground utility damage prevention advisory committee shall study the nine (9) elements identified at 49 USC § 60134(b) for an effective damage prevention program and any rules or regulation promulgated by the United States department of transportation's pipeline and hazardous materials safety administration (PHMSA) and shall make recommendations on how Tennessee can best comply with the federal law, rules, and regulations. The committee shall report its findings and recommendations to the governor, speaker of the senate, speaker of the house of representatives, and comptroller of the treasury no later than November 1, 2013. The committee's report shall include the following:

(1) A recommendation on which agency or agencies in state government shall be responsible for administration, enforcement, and adjudication of a compliant underground damage prevention program. Such recommendation shall address ongoing stakeholder participation in the process;

(2) A recommendation addressing the amount of civil penalties and the application of such penalties to major and minor offenses and offenders;

(3) A recommendation on how such underground prevention program should be funded and how civil penalties should be distributed. Such recommendation shall include funding for improved education and training to prevent underground damage;

(4) A recommendation to accomplish mandatory membership including a definition of a utility for membership purposes and a time line for phasing in mandatory membership;

(5) A review and recommendation on the appropriate definitions of activities subject to the underground damages statute;

(6) A recommendation for reporting underground utility damage incidents to include the form and content of such reports. Such reports should include an analysis of causes of damage and effectiveness of prevention measures;

(7) A recommendation for a process to assist in underground utility location in the design phase of construction projects; and

(8) A recommendation for deploying mandatory electronic underground utility locating technology for future utility construction.

(c) The members of the Underground Utility Damage Prevention Advisory Committee shall serve without compensation.

SECTION 2. Upon completion of its report of recommended legislation, the Underground Utility Damage Prevention Advisory Committee shall cease to exist.

SECTION 3. This act shall take effect upon becoming law, the public welfare requiring it.